

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-185917

DATE: August 3, 1976

61279
98745

MATTER OF: G. F. Business Equipment, Inc.

DIGEST:

1. Late bid is properly considered for contract award under FPR 1-2.201(a)(31) where certified mail receipt indicates that bid was mailed more than 5 days prior to bid opening.
2. Possibility that late bid procedures may be subverted by bidder and postal service employee acting illegally does not warrant amendment of federal procurement regulations provision permitting acceptance of late bids sent more than 5 days prior to bid opening by certified mail.

G.F. Business Equipment, Inc. (GF) protests contract awards made to Art Metal-U.S.A., Inc. (Art Metal) by the Federal Supply Service of the General Services Administration (GSA) under Invitation for Bids (IFB) No. FEFP-T1-20000-A-11-10-75 and IFB No. FEFP-T2-55915-A-1-29-76. As stated by the protester, the basis for the protest is that

"* * * the circumstances surrounding the receipt and acceptance by GSA of late bids from Art Metal in connection with these two solicitations, while meeting the minimum requirements of the late bid regulations of GSA, raise considerable doubt as to the efficacy and the fairness of GSA's bid regulations and requirements, but, more importantly, as to the integrity of the competitive bid process."

The essential facts regarding the two solicitations are the same. In each case, bids submitted by GF were low at the time of bid opening, only to be undercut by late bids submitted by Art Metal which arrived the day after bid opening. In each case, Art Metal produced a certified mail receipt indicating that the

bids had been sent by certified mail more than 5 days prior to bid opening and were, therefore, eligible for consideration under FPR § 1-2.201(a)(31) which provides:

"(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids* * *.

* * * * *

(c) The only acceptable evidence to establish:

(1) The date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service."

The protester concedes that the applicable law, as applied to the facts available to GSA, required that Art Metal's bids be considered. However, citing the presence of Art Metal personnel at both bid openings, the closeness and precision with which Art Metal's late bid undercut the timely low bids submitted by GF, and the allegedly excessive period of time (7 days in each case) for mail to travel from Newark, New Jersey to Washington, D.C., the protester suggests that our Office should conduct an investigation into the circumstances surrounding the mailing of these bids. The protester believes that consideration should be given to amending the late bid procedures to prohibit consideration of late bids sent by certified mail.

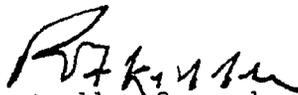
GSA has advised us that their Office of Investigations conducted an inquiry and "The investigation did not disclose any malfeasance on the part of GSA employees or anyone else." We are further advised that the case has been referred to the Postal Service which has not yet issued a report on the matter. As the protester has failed to present any direct evidence of impropriety, we do believe that an additional inquiry by our Office at this stage would not serve a useful purpose. However, in the event

that the Postal Service investigation uncovers evidence of criminal conduct, the matter will be referred to the Department of Justice for appropriate action.

The protester also suggests that the Federal Procurement Regulations be changed to insure the integrity of the competitive bid process. GF contends that only mail sent by registered mail provides adequate evidence of the time of mailing. The present regulations provide that a registered or certified mail postmark or receipt is adequate proof of the date on which a bid was mailed. When certified mail is used, proof of the date of mailing must come from a certified mail receipt which can only be legally obtained when the article is surrendered to a postal employee for mailing. The fact that, in an isolated case, a bidder may subvert the intent of the Federal Procurement Regulations by acting in concert with a Postal Service employee who is violating the Postal Service regulations does not, in our opinion, warrant an overhaul of the late bid procedures.

We find that the protester has presented no evidence to indicate that GSA acted improperly in accepting the bids submitted by Art Metal and, accordingly, the protest is denied.

Deputy


Comptroller General
of the United States